PUBLIC PROSECUTOR

v.

PARKASH KAUR A/P SADHU SINGH & ANOR.

HIGH COURT MALAYA, JOHOR BAHRU
DATO' HJ. ABDUL MALIK BIN HJ. ISHAK J
[CRIMINAL APPEAL NO: 42-5-1990]
17 DECEMBER 1994

CRIMINAL PROCEDURE: *Bail bond - Police bail - Whether penal in nature - Whether to be strictly construed - Bail bond revoked by police - Whether bailors relieved of duty to produce accused in Court - Forfeiture - Refusal by Court to forfeit bail sum - Whether proper - Criminal Procedure Code s. 390.*

This was an appeal by the Public Prosecutor against the decision of the Sessions Judge refusing to forfeit a bail bond despite the bailors' failure to produce the accused person in Court. The facts were that sometime in 1987, Balbir Kaur, the Magistrate attached to the Pontian Magistrate's Court, was arrested by the Anti Corruption Agency (ACA) for alleged corrupt practice. On 6 October 1987, to secure her release pending her appearance in Court, Balbir Kaur signed a "surat perjanjian dan jaminan kepada polis DiRaja", a document equivalent to a bond under s. 390 Criminal Procedure Code, and by that pledged to present herself at the Johor Bahru Magistrate's Court on 14 November 1987 after her release thereof. The bail sum was set at RM50,000 for which the two respondents herein stood sureties.

Meanwhile, Balbir Kaur had intimated to the ACA that she wanted to plead guilty, and to speed up matters the ACA decided to bring the case forward to 22 October 1987. Following that, on 18 October 1987, the police issued two letters revoking the bail bond and at the same time directing the respondents to be present at the ACA's office, Johor Bahru on 22 October 1987. The respondents did appear at the ACA's office as directed but without Balbir Kaur, who had already absconded. On the same date, i.e 22 October 1987, in the absence of Balbir Kaur and the respondents, the ACA filed official charges against Balbir Kaur at the Sessions Court Johor Bahru, and thereafter, initiated forfeiture proceedings of the bail bond against the respondents.

The learned Sessions Judge ruled that as the bond had been revoked the respondents were no longer under any duty to produce the accused in Court and hence refused to order forfeiture. Hence this appeal by the Public Prosecutor.

Held:

[1] The surety bond, being penal in nature, should be construed strictly and no leeway should be given to it. Section 390 of the Criminal Procedure Code states the time and place where the bailors are responsible to ensure the attendance of Balbir Kaur. The two respondents are only bound by such terms and nothing else.

[2] The two letters as issued by the police had legally revoked the bond that the respondents had entered into to produce Balbir Kaur at the Magistrate's Court, Johor Bahru on 14 November 1987. Likewise, these two letters did not impose any legal burden on the respondents to produce Balbir Kaur at ACA's office Johor Bahru on 22 October 1987. Therefore the respondents' failure to produce Balbir Kaur, either at the ACA's office or the Magistrate's Court, did not carry with it any adverse significance.

[3] On the facts the respondents were thus entitled to be absent from attending the Sessions Court, Johor Bahru, as their legal duty under the bond to produce Balbir Kaur at the Magistrate's Court, Johor Bahru, on 14 November 1987 had been dissipated by the letters of 18 October 1987. The trial Court appreciated good law when it refused to forfeit the bond.

[Appeal dismissed]

Cases referred to:
Khor Hong Guan and Moh Ooi Hee v. Rex [1950] 16 MLJ 85 ***(foll)***
Shamsuddin Sirkar v. Emperor [1962] ILR, Calcutta Series, Vol. XXX 107 ***(foll)***

Legislation referred to:
Criminal Procedure Code (FMS CAP. 6), ss. 390 & 511

For the appellant - Masri bin Mohd. Daud DPP
For the respondents - Ho Thian Cheh; M/s. Ho Thian Cheh & Co.

JUDGMENT

Hj. Abdul Malik bin Hj. Ishak J:

Balbir Kaur a/p Sadhu Singh ("Balbir Kaur"), an ex-Magistrate of the Pontian Magistrate's Court and currently a fugitive on the run and on the BPR's (Badan Pencegah Rasuah) wanted list signed a "surat perjanjian dan jaminan kepada Polis DiRaja" on 6 October 1987 for her attendance in the Magistrate's Court, Johor Bahru on 14 November 1987 (see pp. 113 and 115 of the appeal record). In fact, Balbir Kaur signed a bond as envisaged under s. 390 of the Criminal Procedure Code (FMS Cap 6) ("the CPC") and by it she was released on bail in the sum of RM50,000 with two of her sureties in the persons of the first and the second respondents who undertook to produce Balbir Kaur at the Magistrate's Court, Johor Bahru on 14 November 1987.

Mr. Nainappan s/o Suppiah (PW9), the then BPR's Director of Investigations (a senior and an experienced police officer who went up the ladder in the BPR's hierarchy) had been instructed by his superiors to bring forward Balbir Kaur's case to 22 October 1987 as he had intelligence reports that Balbir Kaur might abscond. It was in evidence that Balbir Kaur met Mr. S. Nainappan at the BPR's office in Kuala Lumpur on 7 October 1987 and there she agreed to take the blame on condition that her brother, by the name of Jasbir Singh s/o Sadhu Singh, be exonerated. After that brief meeting with Mr. S. Nainappan, the BPR got wind of the absence of Balbir Kaur. True enough, the BPR failed to trace Balbir Kaur at her residence in Pontian (No. 1227, Lorong Pinang, Pontian) and at her sister's place in Johor Bahru.

It must be borne in mind that, at that juncture, Balbir Kaur had not been charged in the Magistrate's Court, Johor Bahru and in fact it was only on 22 October 1987 that Encik Munawar Zainal Abidin (PW7) filed the charges against Balbir Kaur and two others at the Sessions Court, Johor Bahru. And, of course, events showed that Encik Munawar waited in vain for Balbir Kaur and her two bailors at the Sessions Court, Johor Bahru on 22 October 1987 and, consequently, the Court issued a warrant of arrest against Balbir Kaur and a notice to show cause to both bailors/respondents, as to why the bail bond ought not to be forfeited, was issued.

It was in evidence that Balbir Kaur wanted to plead guilty and, to avoid undue publicity, BPR had gone all out to assist Balbir Kaur and, in the course of it, the police was requested to issue two letters (Exhibits P1A and P1B) revoking the bail bonds as seen in pp. 113 and 115 of the appeal record, and directing the bailors/respondents to be present at BPR's office

at Johor Bahru on 22 October 1987 at 9.00 a.m. The bailors/respondents appeared at the BPR's office at Johor Bahru on 22 October 1987 at 9.00 a.m. without Balbir Kaur - much to the chagrin of Encik Munawar who had by then registered Balbir Kaur's case at the Sessions Court, Johor Bahru and waited in vain for the arrival of Balbir Kaur and her two bailors/respondents.

The BPR must have been swayed by the sweet talk of Balbir Kaur. The BPR and their officers cannot be faulted for this. Had Balbir Kaur appeared on 22 October 1987 at 9.00 a.m. at the BPR's office at Johor Bahru with the two bailors/respondents, the matter would have ended there and the rigmarole of the forfeiture proceedings as conducted by the Sessions Court, Johor Bahru would not have taken place. Who would have thought that the recalcitrant Balbir Kaur, the then Magistrate, after being given a red carpet treatment by the BPR would abscond? The first respondent, the elder sister of Balbir Kaur, described the latter as stubborn and arrogant (see p. 69 of the appeal record). I would like to add to that Balbir Kaur is also a liar. She lied to Mr. S. Nainappan when she conveyed the impression that she wanted to plead guilty. She lied all the way to the BPR officers and managed to sweet talk the BPR to reduce the publicity.

By then, as I recalled, the newspapers carried headline news about Balbir Kaur's nefarious activity - undue publicity that brought shame to the Judiciary. This case may surely be a bitter lesson to the BPR.

The Sessions Court Judge, Johor Bahru ("the trial Court") that conducted the forfeiture proceedings against the bailors/respondents refused to forfeit the sum of RM50,000 to the Malaysian Government when Balbir Kaur failed to appear at the Sessions Court, Johor Bahru on 22 October 1987. The prosecution, being dissatisfied with the decision of the Trial Court, lodged an appeal.

There are two important documents upon which this appeal must surely hinge on. Firstly, the bond itself (see pp. 113 and 115 of the appeal record). The bond is a creature of statute, to be exact, s. 390 of the CPC which briefly states the time and place where the bailors/respondents are responsible to ensure the attendance of Balbir Kaur. The two bailors/respondents are clearly bound by such terms as appeared in the bond and nothing else. For convenience, I reproduce below the passages in the bond (the wordings in pp. 113 and 115 of the appeal record in regard to the bond are identical):

Asal (Polis 43)
(Pin. 4/83)

Polis Diraja Malaysia

No.232/87 Balai Polis Johor Bahru
Aduan No. Jln Bandar Rpt:15555/87

Surat Perjanjian Dan Jaminan Kepada Polis DiRaja

Bahawa saya (nama) Balbir Kaur a/p Sadhu Singh I/C: 5248224 yang tinggal di 1227, Lorong Pinang, Pontian, Johor yang telah kena tuduh dengan kesalahan adalah dengan ini mengaku akan hadir di hadapan Mahkamah Majistret di Johor Bahru pada pukul 8.30 pagi pada haribulan 14/11/87 (atau pun pada masa dan haribulan yang lain diberitahukan oleh Polis DiRaja kepada saya) kerana menjawab tuduhan ini, jika sekiranya tiada saya hadir sebagaimana yang tersebut maka saya mengaku akan membayar kepada Kerajaan Malaysia wang sebanyak $50,000.

Jamin Percaya

Bertarikh pada 6 Oktober 1987

Banyak wang telah disimpankan dengan Polis DiRaja $

(Tiada payah diserahkan apa-apa wang kepada Polis DiRaja melainkan kalau dikehendaki olehnya)

Resit nombor t.t

Balbir Kaur a/p Sadhu Singh
.....
Tandatangan yang kena tuduh

Saya (nama) (1) Parkash Kaur a/p Sadhu Singh, No. 444, Jln, Bukit, Kuala Kangsar, Perak, (2) Kuldip Singh a/l Harbajan Singh I/C : 6817229 yang tinggal di No.538B, Jln. Ab. Samad, Johor Bahru dengan sesungguhnya menjamin bahawa orang yang kena tuduh yang tersebut namanya dan kesalahannya di atas akan menghadirkan dirinya di hadapan Mahkamah Majistret yang tersebut di atas pada jam dan hari yang tersebut di atas kerana menjawab tuduhan yang akan dikenakan kepadanya; jika sekiranya dia tiada hadir sebagaimana yang tersebut maka saya jamin akan membayar kepada Kerajaan Malaysia wang sebanyak RM50,000.

Jamin Percaya

Bertarikh pada 6 haribulan Oktober 1987

t.t. t.t.

Kuldip Singh a/l Harbajan Singh Parkash Kaur a/p Sadhu Singh
... ...

Tandatangan orang yang memberi jaminan yang pertama
Perenggan ini tidak terpakai.

t.t.
...
Tandatangan Pegawai Polis serta copnya
(Shafie B. Ismail) K/PPP
Pegawai Penyiasat
IPDP Johor Bahru

From the tenor of the bond, the bailors/respondents are bound to produce Balbir Kaur at the Magistrate's Court, Johor Bahru at 8.30 a.m. on 14 November 1987. However, as stated in the brief recital of the facts, the police was instructed by the BPR to bring forward the case to 22 October 1987 at 9.00 a.m. and for the bailors/respondents to appear together with Balbir Kaur at the BPR's office, Johor Bahru. Secondly, there are two letters dated 18 October 1987 (Exhibits P1A & P1B) addressed to each of the two bailors/respondents and the words employed therein are identical. For convenience, I reproduce below the letter dated 19 October 1987 and marked as Exhibit P1A.

Ibu Pejabat Daerah Polis
Polis DiRaja Malaysia,
Johor Bahru,
80000 Johor. Tel: JB 07-232222

'Sedia Berkhidmat Secara Profesional' Ruj.tuan:
Ruj.kami:(PR)35/82
Tarikh Islam:-
Tarikh: 18hb.Okt. 1987.

Parkash Kaur A/P Sadhu Singh,
No.2E, Jalan Ismail,
Johor Bahru

Puan,

Per: Pembatalan Perjanjian Jamin Polis (Jalan Bandar Rpt: 15555/87)

Adalah dimaklumkan bahawa anda adalah penjamin pertama, terhadap Balbir Kaur A/P Sadhu Singh, seperti yang tercatit dalam surat perjanjian jamin polis No.232/87, yang dikeluarkan oleh PPP Shafie Bin Ismail dari Ibu Pejabat Daerah Polis, Johor Bahru pada 6hb. Oktober 1987. Dengan ini diberitahu, bahawa perjanjian jamin polis itu telah dibatalkan, dan anda dikehendaki menghadirkan diri bersama sama dengan Balbir Kaur A/P Sadhu Singh di pejabat BPR, Johor Bahru, pada jam 9.00 pagi, 22/10/1987.

Sekian, terima kasih.

'Berkhidmat Untuk Negara'
t.t.
(.....)

b/p Ketua Polis Daerah
Johor Bahru

(A.Paramasivam) PPP.
PP Jenayah Besar
Ibu Pejabat Daerah Polis
Johor Bahru

s.k. i) Pengarah BPR, JB.
ii) (PR) 35/82.

Exhibit P1B was addressed to the second bailor/respondent at a different address and the contents are identical as Exhibit P1A and, I need not reproduce them here.

The titles of these two letters (Exhibits P1A and P1B) adverted to the revocation of the police bonds (Jalan Bandar Report 15555/87) - the bond that was signed by Acting ASP Shafie bin Ismail dated 6 October 1987. In Malay language it says plainly: "... bahawa perjanjian jamin polis itu telah dibatalkan...". Of course, the bailors/respondents must have sought legal advice and they appeared at the BPR's office on the date and time stipulated therein minus Balbir Kaur.

In my considered judgment, the two letters (Exhibits P1A and P1B) had legally revoked the bond entered by the bailors/respondents to produce Balbir Kaur at the Magistrate's Court, Johor Bahru on 14 November 1987 at 8.30 a.m. and these two letters did not impose a legal burden on the bailors/respondents to produce Balbir Kaur at BPR's office Johor Bahru on 22 October 1987 at 9.00 a.m.

In *Khor Hong Guan and Moh Ooi Hee v. Rex* [1950] 16 MLJ 85, both the appellants had stood surety for the accused to appear before a Magistrate's Court. The accused had appeared several times until the case was transferred to the Sessions Court, where the accused was absent. The appellants submitted that their duty was to ensure the accused's appearance in the Magistrate's Court not the Sessions Court. Jobling J, in a short judgment, held that they have not contravened the condition of their bonds and the forfeiture should be set aside.

In *Shamsuddin Sirkar v. Emperor* [1962] ILR, Calcutta Series, Vol. XXX at p. 107 where a surety executed a bail-bond guaranteeing that the person, for whom he stood surety, would appear at the Court of a Deputy Magistrate before whom the case was pending, and the

accused failed to appear before the District Magistrate, to whose file the case had been transferred. Stevens and Harington JJ in a joint judgment held that there had been no breach of the conditions of the bail-bond, and that the order forfeiting it under s. 511 of the Criminal Procedure Code should be set aside.

Applying these two cases to the facts of the present appeal, the BPR found it germane to revoke the bond and to register the case against Balbir Kaur and two others in the Sessions Court, Johor Bahru on 22 October 1987 and when both the bailors/respondents together with Balbir Kaur failed to turn up at the Sessions Court, Johor Bahru, as far as the bailors/respondents were concerned they were entitled to be absent from attending the Sessions Court, Johor Bahru as their legal duty under the bond to produce Balbir Kaur at the Magistrate's Court, Johor Bahru on 11 November 1987 had been dissipated by the letters dated 18 October 1987 and, the Trial Court, appreciated good law when it refused to forfeit the bond. In my judgment, the surety bond, being penal in nature, should be construed strictly. No leeway should be given to it. In the circumstances, I have no choice but to affirm the decision of the trial Court and to dismiss the appeal.

The first respondent in her evidence categorically stated that she had relatives in Canada, United Kingdom, India and Australia and that it was not her duty to write and enquire from them about Balbir Kaur as she would not want to raise the embarrassing issue abroad. I cannot disagree with her on this point. Balbir Kaur had brought disgrace to the Magistracy in Malaysia; her name will fall in history as a despicable and contemptuous individual. Be that as it may, the ball is still at the BPR's feet and it is for them to aim it at the goal post.